

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26 TH DAY OF May 1998

BEFORE

THE HON 'BLE MR.JUSTICE V.GOPALAGOWDA

CIVIL REVISION PETITION No.3056/93

Between:

1. Smt.Achamma,
W/o.Late Indra Singh,
Major, Agriculturist,
Resident of Kamalapur,
Hospet Taluk,
Bellary District.
2. Smt.A.Lakshmi Bai,
W/o.A.Sitaram Singh,
Major, Agriculturist,
Resident of Kamalapur,
Hospet Taluk,
Bellary District.

..Petitioners

(By Sri S.V.Shastry, Advocated)

And:

1. H.Dhanaraj Singh,
2. H.Udaya Singh,
3. H.Pruthvi Singh,

Respondents 1 to 3 are
Sons of late H.Balaji Singh,
Majors, Agriculturist,
Residing near Jogi Canal,
Kampli Hospet Taluk,
Bellary District.

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4. Smt.Lalita Bai,
W/o.Shivalal Singh &
D/o.Late Balaji Singh,
Major, Sinecure,
R/a.Naski,
Raichur District.

...Respondents

(By Smt.K.R.Meenakumari, GA)

This Civil Revision Petition filed under Sec.115 of CPC against the order dated 20.9.1993 passed in OS 69/89 on the file of the Civil Judge, Hospet, ordering that plaintiffs are directed to pay the additional Court fee on Rs.1,00,000/- as per the unamended Karnataka Court fees and suits valuation Act, which was in force as on the date of presenting the plaint. I.A.VI will be considered and decree will be passed only after payment of additional Court fee.

This Civil Revision Petition having been heard and reserved for orders and coming on for pronouncement of orders this day, the Court made the following :

O R D E R



O R D E R

This Revision Petition is filed challenging the impugned order passed by the Trial Judge in I.A.VI in OS 69/89 dated 20.9.1983 urging the following grounds:

The learned Trial Judge failed to appreciate the relief of declaration of the title of the petitioner-plaintiffs for consideration of possession and mesne profits in respect of the properties, both lands and houses described in the schedule thereto and the Court fee payable under Sec.24(a) of the Karnataka Court Fee and Suits Valuation Act (in short 'the Act') has been correctly paid for the said reliefs. As such there could be no occasion for demanding further court fee on the adjustment of the relief by the parties and pertaining to the subjectmatter of the suit.

2. The Trial Judge has further failed to appreciate and consider that the relief sought for and the payment of Court fee on the said relief are in conformity with the provisions of the said Act. Therefore, the impugned order is

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not sustainable in law. The further ground urged is, compromise petition filed by the parties is neither plaint nor written statement therefore, is not a chargeable document hence they are not liable to pay the Court fee as observed by the Trial Judge in the impugned order. The compromise petition filed by the parties on the basis of which the Judgment and decree passed by the Trial Judge would ^{not} relate back to the date of institution of the suit, therefore, he is ^{not} liable to pay the Court fee on the amount which was required to be payable by the petitioners as on the date of the institution of the suit. In support of this submission, the learned counsel relies upon the Judgment of this Court reported in ILR 1994 (3) Page 1822 in the case of Canara Bank - Vs - Krishna Tubewell. The learned counsel appearing for the petitioner further submits that, the compromise petition filed under Order 23 Rule 3 CPC deciding the scope of the plaint which is an adjustment between the parties which was the subject matter of the suit. Further it is submitted

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that, petitioners-plaintiffs~~defendants~~ were in good terms by filing compromise petition to some extent they have given up their title and rights upon the plaint schedule property in favour of the respondent-defendants. This important aspect of the matter is not taken into consideration by the learned Trial Judge while directing the further payment of additional Court fee. Therefore, exercise of power by the Trial Judge is in contravention of the provisions of the Act and same is vitiated by law. Hence, the impugned order is liable to be set aside. The learned counsel further relies upon a Judgment of Andhra Pradesh High Court in AIR 1971 ANDHRA PRADESH 114 on this point.

3. I have perused the impugned order passed on I.A.VI. In my opinion, the Trial Judge has passed a well considered order by giving cogent and valid reasons in support of the findings arrived at by him and with reference to the law on the question and considering the relevant provisions i.e. Sec.7(2) and Sec.24(a) of the

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Act. The learned Trial Judge has elaborately considered the contentions urged on behalf of the petitioners before him. He has examined in detail with reference to the questions raised before him with regard to the payment of additional Court fee as per the terms and conditions agreed upon by the parties in the compromise petition.

4. The learned Trial Judge has categorically held, eventhough the terms of the compromise petition arrived at by the parties are deciding the scope of the plaint, such a compromise petition is acceptable considering Order 23 Rule 3 CPC which gives a mandate. The learned Trial Judge has stated that said order gives a mandate to the Court to record the lawful adjustment or compromise in terms of such compromise to pass a Judgment and decree in terms of such compromise or adjustment. He has further held that, sub-rule 3 of the order referred to above requires the agreement or compromise petition between the parties must relate to the parties to the suit. Even if the

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agreement or the ~~compromise~~^{terms} is not the subject matter of the suit but relates to the parties to the suit in such circumstances, it has to be recorded and the decree has to be placed in terms of such compromise petition.

5. The learned Trial Judge considered the ratio laid down by the Andhra Pradesh High Court in the case stated supra on behalf of the petitioners for the proposition that, the Act referred to above is a taxing statute it does not specify a written statement or memo of compromise as a chargeable for Court fee is not correct position of law holding that, facts of the said case referred to above are not applicable to the facts of the instant case. In the present case, parties have settled the dispute and petitioners have agreed to pay certain sum to the defendant in terms of the compromise petition in one lakh rupees in lieu of giving up their claim in respect of suit properties. Therefore, the learned Trial Judge drawn decree in terms of compromise petition as a

chargeable document under Sec.4 of the Act.

6. On the basis of terms and conditions of the compromise petition to be incorporated in the decree for a sum of Rs.1 lakh payable by the defendant in favour of the petitioners in lieu of their rights upon the suit schedule property such a decree would be an executable decree under the provisions of the Civil Procedure Code therefore, learned Trial Judge has held that, unless the Court fee ~~is~~ and the said payment is made under the provisions of the Act, no decree can be drawn in terms of the compromise petition.

7. In so far as the alternative prayer is concerned, the learned Trial Judge has directed the petitioner to pay the Court fee at the present rate which were prevailingⁱⁿ as on the date of filing compromise petition. The learned Trial Judge has directed the petitioners to pay the Court fee on the terms to be incorporated in the Judgment and Decree as per the amended Act. In

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In support of his contention, he strongly relied upon the law laid down by the Bombay High Court reported in AIR 1927 Page 6643 contending that Court fee has to be paid as on the date of the order passed by the Court but, not as on the date of filing of the petition. In support of this submission, the reliance is placed in the case reported in ILR 1994(3) Page 1822 which has no application to the facts of the case. Learned Trial Judge considered the law laid down by the Bombay High Court in the case referred to supra and has given valid reasons in not agreeing with the ratio laid in the case for the reason that, said Judgment is in respect of a probate. The payment of Court fee to be paid before the grant of probate has to be calculated according to the Act in force as on the date of grant of probate and not on the date of application for probate. Therefore, the learned Trial Judge did not agree with the abovesaid authority to apply the same principle to the facts of the case as the present case is in respect of a suit of decree and judgment which relate back to the date and in respect of suit.

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The learned Trial Judge has further held in the matter of grant of probate and payment of Court fee in such matters on the non-judicial stamps only if the Court grants the probate or grant the succession certificate. Therefore, the learned Trial Judge was perfectly right in directing the payment of Court fee as per the terms ~~of~~ and conditions of the compromise petition which was required to be incorporated in the Judgment and Decree on such sum the petitioners were directed to pay Court fee prevalent as on the date in respect of the suit not on the basis of the amended court fee ^{and} Act, / as the decree would relate back to the date in respect of a suit. In support of such direction, the learned Trial Judge has assigned reasons for either additional ~~court~~ fee or additional court fee has to be paid by the petitioners on the basis of the valuation to be filed in respect of the relief sought for by them. Since the terms and conditions of the compromise petition to be incorporated in the decree relates back to the date of institution of

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suit the petitioners were required to pay either additional court fee or the deficit court fee on such sum which was prevalent as on the date of institution of the suit. Therefore, the submission of the learned counsel for the petitioners was negatived by the Trial Judge holding that, the amended court fee act was not prevalent as on the date of institution of the suit.

8. The learned Trial Judge has appropriately answered the various grounds and the contentions urged before him by the petitioners and has assigned valid and cogent reasons while passing the impugned order. Therefore, this Court in exercise of its revisional power and jurisdiction cannot ~~be~~ exercise in this revision petition as the petitioner has not shown the grounds on which such power can be exercised. In my opinion, the impugned order is not vitiated as it does not suffer from any infirmity or illegality of excessive jurisdiction by the learned Trial Judge.

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9. In this view of the matter, I do not see any valid grounds made out by the petitioners to interfere with the impugned order. Hence, I pass the following:

ORDER

Revision Petition is dismissed. No costs.

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JUDGE

Sk/-